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Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

LEONARD CASEY AND HAROLD DEAN SUTTLE,
Petitioners

v.

STATE OF TENNESSEE,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE TENNESSEE SUPREME COURT

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Dated: May 14, 1987

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48 pp

QUESTIONS PRESENTED

1. Whether or not the Tennessee Supreme Court has misinterpreted, in this Tennessee review of first impression of a Federal wire intercept ordered 1981, the **United States v. Giordano** case, 416 U.S. 505 (1974), the **United States v. Chavez** case, 416 U.S. 562 (1974) and subsequent decisions of various Federal Courts of Appeals, by holding that other than the Attorney General or a specially designated Assistant Attorney General can authorize an application for interception order pursuant to 18 U.S.C. § 2516(1). The opinion is apparently based on the Court's conclusion that the specially designated Assistant Attorney General does not have to execute a written authorization or otherwise affirmatively demonstrate authorization was in fact

given when the purported authorization is properly challenged.

2. Whether or not a trial court's denial of a motion to suppress, in a Title III case, should be upheld by the Tennessee Supreme Court regarding the issuing Federal Court's compliance with the mandatory requirements of § 2518(1)(3) (Judicial requirements) when it is obvious the appellate courts have ignored or erroneously interpreted facts presented to the lower court as clearly contained in the transcript and exhibits presented to the appellate courts.

OTHER PARTIES NOT LISTED IN CAPTION

SHIRLEY RAY BASHAM,

Co-defendant, whose telephone was subject of intercept order, conviction reversed by Tennessee Court of Criminal Appeals on other grounds, pending State of Tennessee Application for Permission to Appeal to Tennessee Supreme Court.

ALEXANDER TAFT,

U.S. Attorney, Western District of Kentucky, who obtained the order for intercept.

ALICE BASHAM,

wife of Shirley Ray Basham, whose telephone was also subject to intercept order.

DENNIS JOE STOBAUGH,

Co-defendant, conviction upheld, status unknown.

BILLY HARGRAVES,

Co-defendant, acquitted at trial.

FEDERAL BUREAU OF INVESTIGATION,

Agency authorized to implement interception order.

JUDGE THOMAS BALLENTINE,

U.S. District Court, Western District of Kentucky at Bowling Green, issued intercept order.

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A. The decision of the Tennessee Court of Criminal Appeals, affirmed by the Tennessee Supreme Court, in a case of first impression, upholding Petitioners' convictions below conflicts with the prior rulings of this Court and numerous other Federal Courts of Appeals, so that it is now unclear, at least in Tennessee State Courts, whether or not an individual in the U.S. Dept. of Justice other than the Attorney General or a

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specially designated Assistant Attorney General, pursuant to 18 U.S.C. 2516(1), (1981), can authorize an application for intercept order pursuant to 18 U.S.C. § 2516(1). To allow the decision of the Tennessee Supreme Court to stand regarding criminal prosecutions solely emanating from evidence gathered pursuant to 18 U.S.C. § 2501, et.seq., will allow the interception of wire or oral communication in a manner contrary to the requirements of 18 U.S.C. § 2516, for which strict construction is mandated, and would subvert the congressional intent underlying Title III of the Omnibus Crime Control and Safe Streets Act.----------19

B. That the Tennessee Supreme Court and Tennessee Court of Criminal Appeals erroneously interpreted the evidence presented to it demonstrating the issuing Federal Judge did not and could not have read the Application for Intercept Order and thus did not and could not have complied with the necessity

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requirement and the three-step probable cause requirement of 18 U.S.C. § 2518(1), the determination of proper authority requirement of 18 U.S.C. 2518(1)(a) or to have drawn the conclusions necessary for the issuance of the Intercept Order pursuant to 2518(3)(a)(b)(c)(d). To allow this decision involving a Federally issued wiretap for which there has been no Federal judicial review to stand will only erode the intended protection of Title III to the citizens of Tennessee. ----------27

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

NO. _____

LEONARD CASEY AND HAROLD DEAN SUTTLE

Petitioners

v.

STATE OF TENNESSEE

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE TENNESSEE SUPREME COURT

Petitioners Leonard Ray Casey and Harold Dean Suttle respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Tennesse Supreme Court in the above entitled case.

OPINIONS BELOW

The opinion of the Tennessee Court of Appeals, affirmed by the Tennessee Su-

preme Court by its denial of petitioners' Application For Permission To Appeal, has not yet been reported. However, it is reprinted in the Appendix hereto at pp. 1a-45a. The Order of the Tennessee Supreme Court is reprinted in the Appendix hereto at pp. 46a. The order of the Criminal Court of Sumner County, Tennessee, denying petitioners' motion to suppress evidence gained by way of wire intercept is reprinted in the Appendix hereto at pp. 47a-49a.

JURISDICTION

The opinion of the Tennessee Court of Appeals was rendered November 13, 1986. Thereafter, a timely application for permission to appeal was denied on March 16, 1987. This petition for certiorari was filed within 60 days of the entry of the order denying the applica-

tion for permission to appeal. This Court's jurisdiction is invoked under 18 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment to the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 18:

§ 2516: Authorization for interception of wire or oral communications. (1981)

> (1) The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or

approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having reponsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of --

§ 2518. Procedure for interception of wire or oral communications. (1981)

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place

where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral com-

munications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that --

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

(b) there is probable cause for belief that particular communica-

tions concerning that offense will be obtained through such interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) there is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify --

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(10)(a) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication or evidence derived therefrom, on the grounds that --

(i) the communication was unlawfully intercepted;
(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or
(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion.

STATEMENT OF THE CASE

Petitioners seek a writ of certiorari to review the judgment of the Tennessee Court of Appeals, Middle Section at Nashville, affirmed without opinion by the Tennessee Supreme Court, which upheld the convictions of Petitioner Casey for third degree burglary with a firearm (2 Counts) and attempt to commit a felony and Petitioner Suttle for third degree burglary with a firearm (2 Counts). To facilitate an understanding of the important issues implicated in this case, Petitioners provide the following facts and judicial procedure below to the consideration of the questions presented:

A. On August 14, 1981, Judge Thomas Ballentine, U.S. District Court for the Western District of Kentucky at Bowling Green, Case No. 81-814-01-L, issued

ORDER AUTHORIZING INTERCEPTION OF WIRE COMMUNICATION authorizing the Federal Bureau of Investigation to intercept telephone calls to and from numbers 502-781-1091, subscribed to by Shirley Ray Basham, Bowling Green, Kentucky, and to and from 502-781-5637, subscribed to by Alice Basham, Bowling Green, Kentucky. (App. 50a-59a.)

B. The Order had been requested by Application of Alexander Taft, U.S. Attorney, Western District of Kentucky, dated August 14, 1981, which was supported by the 67 page Affidavit of Robert H. Brewer, Special Agent, Federal Bureau of Investigation, dated August 14, 1981 (App. 60a-63a)/[1].

/[1] Since only the length of the Brewer Affidavit is at issue and not the specific content, for brevity's sake, only the first and last pages are presented.

C. The Application was further supported by Attorney General Benjamin R. Civiletti's Order No. 921-81 authorizing the Assistant Attorney General in charge of the Criminal Division, U.S. Dept. of Justice to authorize Application for Court Orders for Wire Intercept (App. 64a-67a); an unsigned and uninitialed Authorization for Interception Order Application from D. Lowell Jensen, Assistant Attorney General, Criminal Division, dated August 13, 1981 (App. 68a-70a); and an unsigned or uninitialed letter from D. Lowell Jensen to U.S. Attorney Taft dated August 14, 1981, regarding intercept authorization (App. 71a-73a).

D. On October 16, 1981, the Sumner County Tennessee Grand Jury returned an indictment charging Petitioner Casey and Petitioner Suttle and co-defendants

Dennis Joe Stobaugh and Billy Hargraves with two counts of third degree burglary with a firearm; Petitioner Casey with larceny of auto and two counts of attempt to commit a felony; and co-defendant Shirley Ray Basham with accessory before the fact of third degree burglary with a firearm.

E. November 9, 1982, co-defendant Basham filed a Motion to Suppress all evidence derived from or being fruits of the wire intercept, to which all co-defendants were allowed to join by the Trial Court. Relevant portions of the Motion to Suppress are included in the Appendix (App. 74a-76a). This motion included as grounds, among others, that:

1. The Intercept Order was facially void;

2. The Application for Intercept Order was not properly authorized.

F. The joint Motion to Suppress was denied, after hearing, without comment or opinion by the Trial Court on October 16, 1984 (App. 47a-49a).

G. On January 16, 1985, Petitioner Casey, Petitioner Suttle and co-defendant Stobaugh were found guilty of third degree burglary with a firearm (2 Counts); Petitioner Casey was also found guilty of attempt to commit a felony; co-defendant Shirley Ray Basham was found guilty of accessory before the fact of third degree burglary without a firearm; and co-defendant Billy Hargraves was acquitted.

H. On June 3, 1985, Petitioners' Motion for New Trial, including issues

now before this Honorable Court, were denied.

I. On November 13, 1986, the Tennessee Court of Criminal Appeals, Middle Section at Nashville, affirmed the conviction of Petitioners Casey and Suttle and Stobaugh. In so doing, the Court, regarding issues before this Court, held in its Opinion (App. 1a-45a) that proper authorization for the wire intercept application had been obtained, the issuing judge read the application and had probable cause to issue the intercept order. The Court reversed Basham's conviction for lack of evidence.

J. On March 16, 1987, the Tennessee Supreme Court denied the Casey, Suttle and Stobaugh Application for Permission to Appeal and granted the State's Tennessee Application for Permission to Appeal as to Basham (App. 1a-45a).

K. The appeal to the Tennessee Supreme Court as to Basham, is pending as of this writing.

L. Although the Federal Bureau of Investigation utilized a Federally issued wiretap, no federal arrests or indictments were made as a result of the wiretap and no Federal judicial review of the wiretap has occurred.

M. Although Attorney General Civiletti authorized the Assistant Attorney General (Jensen) in charge of the Criminal Division to then authorize the Intercept Order Application (App. 64a-67a), no specially designated Assistant Attorney General actually authorized the application for intercept order in this case. Instead, the application was obstensibly authorized by Philip Wilens, Director, Officer of Enforcement Opera-

tions, Criminal Division (App. 71a-73a). Even though the purported authorization was challenged in the trial courts and on appeal, neither Assistant Attorney General Jensen, Criminal Division, the Government or the State has yet to make any affirmation, or other offer of proof, that Jensen indeed authorized the Application for Intercept Order.

N. Issuing Judge Thomas Ballentine did not read the supporting documents accompanying the Application for Intercept Order (App. 77a-82a).

O. All evidence presented at trial emanated from or was the fruit of the August 14, 1981 Intercept Order.

Petitioners contend they are entitled to application of the exclusionary rule provided in 18 U.S.C. § 2518(10)(a) for the failure of the Government and ju-

diciary to comply with the provisions of 18 U.S.C. §§ 2516 and 2518 in obtaining the Intercept Order from which the evidence utilized to convict defendants was gained.

REASONS FOR GRANTING THE WRIT

A. The decision of the Tennessee Court of Criminal Appeals, affirmed by the Tennessee Supreme Court, in a case of first impression, upholding Petitioners' convictions below conflicts with the prior rulings of this Court and numerous Federal Courts of Appeals, so that it is now unclear, at least in Tennessee state courts, whether or not an individual in the U.S. Department of Justice other than the Attorney General or a specially designated Assistant Attorney General, pursuant to 18 U.S.C. § 2516(1), (1981), can authorize an application for intercept order. To allow the decision of the Tennessee Supreme Court to stand regarding criminal

> **prosecutions solely emanating from evidence gathered pursuant to 18 U.S.C. §§ 2516 and 2518, will allow the interception of wire or oral communications in a manner contrary to the requirements of 18 U.S.C. §§ 2516 and 2518, for which strict construction is mandated, and would subvert the congressional intent underlying Title III of the Omnibus Crime Control and Safe Streets Act.**

The questions presented by this writ are of such exceptional importance, transcending the particular factual situation and the parties below, that the entire intent of Congress in enacting the requirements of 18 U.S.C. §§ 2516 and 2518, permitting wire and oral communications interception, and the holdings of

this Court and our Federal Courts of Appeals, has been abrogated by the Trial and Appellate Courts of the State of Tennessee. This is especially true considering the factual basis upon which the Tennessee Court of Criminal Appeals, affirmed by the Tennessee Supreme Court, has approved the admission of wiretap evidence in state criminal cases. Admission of evidence gained from wiretap, ostensibly authorized pursuant to 18 U.S.C. §§ 2516 and 2518, is an issue of first impression in Tennessee, although regularly litigated in other states and Federal courts. To allow this holding to become law and to be interpreted to mean that oral authorization of intercept orders without subsequent affirmation, on challenge, and/or that other than the Attorney General or a specially designated

Assistant Attorney General can properly authorize an application for intercept order, will effectively eliminate adherence to the strictly construed requirements of the mandatory provisions of Title III including the utilization of the exclusionary rule provision therein in the courts of the State of Tennessee. In this era of increased utilization of evidence derived from Federal wire/oral interception in state criminal prosecutions, Tennessee must come into compliance with the law already properly enforced in other state and Federal courts.

The facts of this case show there was no proper authorization for the application for specific intercept order by either the Attorney General or a specially designated Assistant Attorney Gen-

eral but instead that the Application for Intercept Order was authorized by the Director, Office of Enforcement Operations, Criminal Division, U.S. Department of Justice. Even in the face of challenge to the unsigned, uninitialed purported authorization by the specially designated Assistant Attorney General, Criminal Division, the United States Government, through the State of Tennessee prosecutor, has yet to produce any evidence, by affirmation or otherwise, that the purported authorization was indeed authorized by the specially designated Assistant Attorney General as mandated by 18 U.S.C. § 2516(1). This fact scenario does not envision application of the authority of **U.S. v. Vogt**, CA 760 F2d 206 (8th Cir. 1985), which sanctioned telephonic authorization from a specially designated

Assistant Attorney General not accomplished by contemporaneous writing; of **U.S. v. Fox**, 349 F.Supp. 1258, (D.C. Ill. 1972), affirmed 500 F.2d 1404, which sanctioned written authorization affirmed by utilization of the specially designated authorizing individual's initials in the memorandum of authorization; of **United States v. Bowdach**, 501 F.2d 220 (5th Cir. 1974) where the Attorney General personally authorized the request for application; of the **Chavez** case /[1], where there was proof of the actual authorization; or ministerial acts of no consequence once the specially designated Assistant Attorney General has actually made his authorization.

/[1] **United States v. Chavez**, 416 U.S. 562 (1974).

This case, to date, has allowed routine processing of the Application for Intercept Order by a Department of Justice subordinate rather than one of the highest named law enforcement officials in the U.S. Government, as named in 18 U.S.C. § 2516(1), who is expected to exercise personal judgment before approving any application. This has not occurred and the Tennessee holdings subvert the strict compliance requirements of 18 U.S.C. § 2516(1) intended by Congress, enforced by the courts, and is in direct conflict with the **Giordano case** /[1] **and the Chavez** case /[2]. Further, the facts presented are most similar to the facts constituting lack of authority for

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/[1] **United States v. Giordano**, 416 U.S. 505 (1974)

/[2] **United States v. Chavez**, 416 U.S. 562 (1974)

intercept order applications in **United States v. King**, 478 F.2d 494 (9th Cir. 1973); **United States v. Wac**, 498 F.2d 1227, (6th Cir. 1974); **United States v. Calallero, 503 F.2d 1018, (6th Cir. 1974); United States v. Laff**, 365 F. Supp. 737, (D.C. S.D. Fla. 1973); and **United States v. Cihal**, 336 F.Supp. 261, (D.C. W.D. Pa. 1972) Cert. Denied, among others, for which suppression was ordered and upheld.

Petitioners understand authorization orders are presumed proper and, in their attempt to overcome such presumption, have risen above mere conjecture or speculation and specifically raised the issue of lack of proper authorization at the earliest opportunity and have factually challenged that the specially designated Assistant Attorney General did not in fact authorize the application. In so

doing, Petitioners carried their burden in making specific challenge to the purported authorization. In the face of this evidentiary challenge, the Courts below have erroneously held that written authorization and/or later affirmation of the actual authorization, if any, is not required and, by implication, that one other than a specially designated Assistant Attorney General can properly authorize an application for intercept order even when the reviewing court is presented with demonstrable challenge to the authorization.

Tennessee is in conflict with the myriad of federal holdings that continually reiterate there must be a showing that the Attorney General, or a specially designated Assistant Attorney General, actually authorized the application for the specific intercept order in question.

This alone is sufficient to require this writ of certiorari be granted in order to bring Tennessee into compliance with existing law and to insure proper application of 18 U.S.C. § 2516(1) to wiretap cases prosecuted in the state courts of Tennessee.

B. That the Tennessee Supreme Court and Tennessee Court of Criminal Appeals erroneously interpreted the evidence presented to it demonstrating the issuing Federal Judge did not and could not have read the Application for Intercept Order and thus did not and could not have complied with the necessity requirement, the three-step probable cause requirement of 18 U.S.C. § 2518(1), and/or the determination of proper authority

> requirement of 18 U.S.C. 2518(1)(a) or to have drawn the conclusions necessary for the issuance of the Intercept Order pursuant to 2518(3)(a)(b)(c)(d). To allow this decision involving a Federally issued wiretap for which there has been no Federal judicial review to stand will only erode the intended protection of Title III to the citizens of Tennessee.

The United States Supreme Court has never explicitly held that a United States District Judge or Magistrate must read the application for intercept order and accompanying affidavit submitted prior to the court executing an order directing implementation of the intercept. However, the United States Supreme Court,

through the **Giordano** case/[1] and **Chavez** case/[2], has upheld the requirements of 18 U.S.C. § 2518 (Judge's duties) as mandatory and that the issuing judge must specifically determine the requirements of 18 U.S.C. § 2518(3) are met, i.e., that probable cause exists for the issuance of the intercept order, that the intercept order is necessary, and that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous. Petitioners submit it is impossible to conceive that the issuing judge can properly make these mandatory findings without reading the application

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/[1] **United States v. Giordano**, 416 U.S. 505 (1974)
/[2] **United States v. Chavez**, 416 U.S. 562 (1974)

and supporting affidavit and any other supporting documents.

The decision in **United States v. Ventresca**, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965), search warrant case, does hold thát the warrants submitted to the courts for issuance must be read prior to issuance. This standard for judicial review was then applied to applications for intercept orders in **United States v. Santarpio**, 560 F.2d 448 (1st Cir. 1977)(Cert. Denied) 98 S.Ct. 609, 434 U.S. 984 54 L.Ed.2d 478.

It is suggested there is no authority whatsoever allowing an intercept order to stand when the evidence discloses the issuing judge did not read the application for order and supporting affidavit so that the judge could comply with the statutory requirements that the court

make certain findings on which the order of intercept is based. Petitioners submit the supporting affidavit must be read in order for the court to conclude the allegations in the application, and the court's ultimate findings in the order, are true.

During the original hearing on all Defendants' Motion to Suppress, the issue of whether or not the issuing judge actually read the Application for Intercept Order and accompanying 67 page F.B.I. Affidavit and purported authorization documents was first raised because of the glaring lack of a signature or initials on the Memorandum of Authorization under the name of the Assistant Attorney General, Criminal Division, the lack of a supporting affidavit regarding actual authorization and the lack of identifica-

tion in the Order for Interception of the person actually authorizing the application as mandated by 18 U.S.C. § 2518(4)(d). Petitioners, understanding intercept orders are to be presumed proper, absent challenge, then timely raised the issue and presented evidence, through the United States Attorney, who processed the application in the United States District Court, that the issuing judge had not read the supporting 67 page affidavit. U.S. Attorney Taft testified he wasn't sure the issuing judge actually read the supporting affidavit, that he did "review" it and that Affiant, Agent Brewer, gave the Court a "summary" of the contents of the affidavit.

The issuing judge's lack of appropriate review on which to base the mandatory findings required by 18 U.S.C. §

2518(4) is corroborated by the fact that the actual Intercept Order itself makes no reference to the identity of the person who obstensibly authorized the application. This is mandatory pursuant to 18 U.S.C. § 2518(4)(d). Petitioners submit that had the trial judge actually read the documents presented to him by U.S. Attorney Taft that he would have rejected the Application and refused to execute the Intercept Order, prepared by U.S. Attorney Taft (App. 80a) because it did not facially comply with § 2518(4)(d); i.e., the name of the person authorizing the application was not divulged in the order. The courts below found the issuing judge had read the application but ignored the question of whether the court had read the supporting affidavit as a predicate to making its

findings of probable cause, necessity and failure of other investigative techniques which were contained in the Court Order. These findings cannot be made by a court, even with its broad discretion regarding issuance of intercept orders, when the court has not read the documents and affidavit and other documents supporting the Application for Intercept Order. Again, in the face of specific challenge, the prosecution failed to provide any competent evidence that the issuing Court had complied with the requirements of 18 U.S.C. § 2518(3)(4). The failure to comply with the judicial determination requirements of 18 U.S.C. § 2518(3)(a)(b)-(c)(d) and the Order content requirement of 18 U.S.C. § 2518(4)(d) alone should mandate the granting of this Petition for

Writ of Certiorari. **United States v. King**/[1].

CONCLUSION

The opinion below is totally inconsistent with holdings of the U.S. Supreme Court and the Federal Courts of Appeals. The opinion invites gross abuse in Tennessee of the protection afforded by 18 U.S.C. § 2516, 18 U.S.C. § 2518 and the Fourth Amendment to the United States Constitution. The contrary decision below, taken in light of decisions in the U.S. Supreme Court and Federal Courts of Appeals, which have required enforcement and strict construction of Title III, injects such a different meaning as to eliminate the mandatory requirements and protection to the citizenry of Title

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/[1] **United States v. King**, 478 F.2d 494 (9th Cir.1973

III in the trial courts of Tennessee which entertain or receive evidence gathered from oral or wire interceptions. A writ of certiorari should issue to correct the judgment below, suppress the evidence gained from the unlawful intercept and to apply the mandatory requirements of Title III to the state courts of Tennessee.

Respectfully submitted,

WILLIAM B. VEST
635 E. Main St.
Hendersonville, TN 37075
(615)824-5108
Counsel for Petitioners

CERTIFICATE OF SERVICE

I certify that I have served copies of this Petition for Writ of Certiorari on Michael J. Cody, Attorney General, and Charles E. Bush, Assistant Attorney General, 450 James Robertson Parkway, Nashville, TN 37019, by depositing copies of same in a mail box with first class postage prepared this 14th day of May, 1987.

I further certify that all parties required to be served have been served.

WILLIAM B. VEST